

Rule 15, Ariz. R. Crim. P.

RESPONSE TO MOTION TO ORDER DISCLOSURE OF RECORDS OF THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY AND TO PERMIT DISCLOSURE BY CPS CASEWORKERS

A court is authorized to hold an *in camera* hearing concerning the scope of discovery, and to determine which documents should be disclosed and which ones should not be.

The State of Arizona, by and through undersigned counsel, in response to the defendant's motion for disclosure of records from the Arizona Department of Economic Security (ADES) and Child Protective Services (CPS), asks this Court to hold an *in camera* hearing, for the reasons set forth in the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

I. Facts:

The State has already disclosed to the defense all of the CPS records the State has received from ADES concerning victim C.G. However, CPS did not include in the documents sent to the State any records concerning investigations of the victim's natural parents, Carlos Garcia Guzman and Laura Shannon Davidson. The State has learned that the file containing those records has been archived. The State has asked CPS for those records. As soon as the State receives those records, the State will forward the sealed records to this Court.

The State has also asked CPS to provide the State with all records concerning CPS's licensing Angelique and John Mayer as foster parents. As soon as the State receives those records, the State will provide copies of the records to the defendant.

II. The Law:

The Arizona Court of Appeals has stated that "the power of the court to conduct *in*

camera proceedings is derived from the inherent power of the court to judicially conduct its affairs.” *Phoenix Newspapers, Inc. v. Superior Court*, 140 Ariz. 30, 33, 680 P.2d 166, 169 (App. 1983). Also see generally *Arizona Department of Economic Security v. O’Neil* 183 Ariz. 196, 197, 901 P.2d 1226, 1227 (App. 1995).

CPS records are confidential under A.R.S. § 8-807 (B), but § 8-807(C)(2) allows a court to obtain such confidential records “if this information is necessary to perform official duties.” In addition, under § 13-807(C)(11), other governmental agencies can obtain such records. Subsection F provides the procedure for others to seek such records:

F. A person or entity that is not specifically authorized in subsection C, D or E of this section to obtain information from records may petition a judge of the superior court to order the department to release that information. The court shall balance the rights of the parties entitled to confidentiality pursuant to this section against the rights of the parties seeking release of the information. The potential benefit or harm from releasing the information sought shall be considered. The court may release otherwise confidential information only if the rights of the parties seeking the information and any benefits from releasing the information sought outweigh the rights of the parties entitled to confidentiality and any harm that may result from releasing the information sought. The court may receive evidence and shall make written findings in support of its decision. **The court may require the department to submit the requested information to the court for an *in camera* inspection.** If an order for release is deemed proper, the court may restrict the use, disclosure or dissemination of the information sought to protect or minimize harm to any person involved. If the court orders the release of information pursuant to this subsection, it may order the department to release the requested information after the department takes any precautionary measures required under this section. The court shall not authorize the release of initial reports of abuse or neglect or information that compromises the integrity of a department investigation, a judicial proceeding or a civil or criminal investigation.

[Emphasis added.] Rule 15.5(c) also allows the Court to examine requested materials *in camera*. That Rule states:

On motion of the party seeking a protective or excision order, or submitting for the court’s determination the discoverability of any material or information,

the court may permit the party to present the material or information for the inspection of the judge alone. Counsel for all other parties shall be entitled to be present when such presentation is made.

[Emphasis added.]

Conclusion

This Court is authorized to hold an *in camera* hearing to review the CPS records. The State asks this Court to perform an *in camera* inspection of the records to determine which, if any, of those records may be disclosed to the defendant. Also, the State asks this Court to direct all CPS caseworkers not to discuss any records during interviews, other than those records that this Court directs be disclosed to the defense.